

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

<b>SOCORRO SIGALA</b>	)	
Claimant	)	
VS.	)	
	)	Docket Nos. 258,316 & 258,317
<b>CITY OF LIBERAL</b>	)	
Respondent	)	
AND	)	
	)	
<b>EMC INSURANCE COMPANY</b>	)	
Insurance Carrier	)	

**ORDER**

Claimant appeals the October 30, 2000, preliminary hearing Order of Administrative Law Judge Pamela J. Fuller denying claimant medical treatment.

**ISSUES**

Does claimant's current need for medical treatment stem from an accidental injury or injuries which arose out of and in the course of her employment with respondent on the date or dates alleged?

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Having reviewed the entire evidentiary record, the Appeals Board finds for preliminary hearing purposes that the Order of the Administrative Law Judge, denying claimant medical treatment in the above matter, should be affirmed.

Claimant was a librarian for the City of Liberal. On November 2, 1998, while on a flight of stairs, claimant slipped and nearly fell, catching herself on the handrail.

Claimant first started receiving treatment from Ray E. Allen, M.D., of Internal Medicine in Liberal, Kansas on November 3, 1998. Claimant was then referred to orthopedic surgeon Guillermo Garcia, M.D., who diagnosed scoliosis and a back sprain. Dr. Garcia treated claimant through January 5, 1999, at which time he released her with

the restriction that she limit her pushing, pulling and lifting to 50 pounds occasionally. Dr. Garcia felt claimant would fully recover from the incident of November 2, 1998.

Claimant continued receiving treatment with Dr. Allen through 1999, although the treatment through that year was for her high blood pressure and occasional chest pain. Claimant did not again seek treatment for her low back until March 2000, at which time she complained to her chiropractor, Dr. Streiff, of back pain with radiculopathy into her right thigh. She told Dr. Streiff her symptoms first appeared the Saturday before the examination.

During claimant's deposition and during her testimony at preliminary hearing, claimant gave different histories of onset. At times, claimant testified that the back pain was continuous after she was released by Dr. Garcia and while treating with Dr. Allen in 2000. At other places in her testimony, claimant stated that the back pain worsened during that same period of time. Finally, claimant testified that the pain suddenly became worse in February 2000, with a more significant increase in back pain in March of 2000.

Respondent contends claimant has not proven that her current need for medical treatment relates to the November 1998 accident. Respondent further contends that claimant has failed to prove that her condition worsened through a series of accidents beginning in 1998 and continuing through August 1, 2000.

Claimant was referred to Paul S. Stein, M.D., for an evaluation and possible surgical intervention in July 2000. Dr. Stein was provided a history of significant pain in claimant's back and right leg after the 1998 injury. That history indicated that claimant had episodes of improvement, but had predominantly been in pain since the 1998 incident. Dr. Stein diagnosed claimant with a disc herniation at L4-5, impinging on the nerve root at the L5 level on the right side. There was also a small protrusion at L5-S1 on the left, which might be impinging on the S1 nerve root, although not as extensively as on the right. Dr. Stein recommended an epidural injection at that level with possible surgery to follow. Surgery was scheduled for August 15, 2000, but canceled due to questions concerning workers' compensation insurance coverage.

Respondent deposed both Dawnon Cummings, the office administrative assistant at the library, and Sharyl Kells, respondent's former program and service coordinator, in this matter. Ms. Cummings was being trained to replace Brenda Booth, claimant's supervisor, who had recently taken an extended leave of absence due to a significant illness.

Ms. Cummings regularly worked in the same room as claimant, generally within eyesight. She recalled claimant's injury in November of 1998 and the fact that claimant received medical treatment. After claimant returned to work in January 1999 and through

March 2000, claimant never advised Ms. Cummings that she had any ongoing back problems.

Likewise, Ms. Kells worked in the same location as claimant with her desk being adjacent to claimant's desk. Ms. Kells also testified that at no time during that same time frame did claimant advise that she was having any back problems. She never noticed claimant limping or displaying any type of back pain.

The Order in this matter issued by the Administrative Law Judge states "[c]laimant's request for medical treatment is hereby denied." No further explanation is provided.

K.S.A. 1998 Supp. 44-551 provides that the Appeals Board shall not review a pending preliminary hearing order entered by the administrative law judge unless it is alleged that the administrative law judge exceeded her jurisdiction in granting or denying the requested relief. K.S.A. 1999 Supp. 44-534a allows appeals from preliminary hearings with regard to the following disputed issues which are considered jurisdictional and subject to review by the Appeals Board:

- (1) Whether the employee suffered an accidental injury;
- (2) Whether the injury arose out of and in the course of the employee's employment;
- (3) Whether notice is given or claim timely made;
- (4) Whether certain defenses apply.

In the instant case, the Administrative Law Judge denied claimant's request for medical treatment. The Order does not specify the reason for this denial. There is, however, sufficient evidence in the file to support a finding that claimant failed to prove her current need for medical treatment resulted from the November 1998 accident. The Appeals Board finds the medical evidence does not support a finding that claimant's current need for medical treatment stems from the 1998 injury and, thus, did not arise out of and in the course of her employment with respondent.

Additionally, the evidence does not support a finding that claimant suffered a series of accidents through August 1, 2000. The Board, therefore, affirms the denial of medical benefits in this instance.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Pamela J. Fuller dated October 30, 2000, should be, and is hereby, affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of December 2000.

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BOARD MEMBER

c: Steve Brooks, Liberal, KS  
James M. McVay, Great Bend, KS  
Pamela J. Fuller, Administrative Law Judge  
Philip S. Harness, Director